UNC SCHOOL OF LAW

FIRST AMENDMENT LAW REVIEW

Volume 3 | Issue 1 Article 6

12-1-2004

When Free Speech and Free Elections Collide: A North Carolina Case Study

Robert H. Halll

WHEN FREE SPEECH AND FREE ELECTIONS COLLIDE: A NORTH CAROLINA CASE STUDY

ROBERT H. HALL*

I. INTRODUCTION

The First Amendment boldly declares, "Congress shall make no law... abridging the freedom of speech"[1] – but what happens when other rights are trampled by a literal reading of that command? We readily accept that the government's compelling interest in protecting public health and safety justifies many common-sense limitations on speech. It is illegal, for example, to yell "Fire" in a crowded movie theater or send a letter to your neighbor laced with anthrax powder.[2] In politics, as well, an absolute prohibition against any regulation of speech would cripple state and federal constitutional protections of free and fair elections.[3] It is illegal, for example, to give a speech about your favorite candidate inside a polling place or send money to voters with your list of endorsements.[4]

---

* Bob Hall has investigated the flow of political money in North Carolina for 20 years and written dozens of reports as research director for the Institute for Southern Studies, Democracy South, and, since 2003, Democracy North Carolina (http://www.democracy-nc.org/moneyresearch/). He was named a MacArthur Fellow in 1992 and serves on the board of N.C. Voters for Clean Elections. He wishes to thank Carmen Hoyme for her valuable help in researching and preparing numerous footnotes for this article.

1. U.S. CONST. amend I.

2. Schneck v. United States, 249 U.S. 47, 52 (1919).

3. Storer v. Brown, 415 U.S. 724, 730 (1974) ("[T]here must be a substantial regulation of elections if they are to be fair and honest.").

4. *See generally* Burson v. Freeman, 504 U.S. 191 (1992) (holding that a state statute prohibiting solicitation of votes within one hundred feet of a polling place was a *valid* content-based restriction on protected speech); Brown v. Hartlage, 456 U.S. 45 (1982) (indicating that state prohibition on

Where should the line be drawn in balancing the rights of free speech with the right to a free and fair election? Someone could argue, at least in theory, that sending money to voters is a form of protected free speech, but it is more plainly a transfer of property, with at least an implicit expectation of something in return. And that's why it is illegal. Section 163-275(2) of the General Statutes of North Carolina says, "It shall be unlawful . . . for any person to give or promise or request or accept at any time . . . any money, property or other thing of value whatsoever in return for the vote of any elector."[5] Someone else could argue, at least in theory, that similar reasoning should apply to campaign donations: Money given to a politician, as to a voter, creates an economic relationship that taints the integrity of a free and fair election. Put another way, a donation is an investment or a property transfer that carries an expectation of reciprocal action, and as North Carolina's six-term State Treasurer Harlan E. Boyles cautioned, "a lot of contributors want some return in benefits."[6] Before he died in 2003, the conservative Boyles translated his growing concern about "pay-to-play" politics into a rather radical suggestion: He asked policymakers to adopt a rule that would ban campaign donors who give over $250 to a state-level politician from being able to do business with any State agency for two years. His idea went nowhere.[7]

---

exchanging anything of value for votes served a compelling government interest in avoiding corrupt elections).

5. N.C. GEN. STAT. § 163-275(2) (2003).

6. Bob Hall, *Phipps Convictions Are Just the Start*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 23, 2003, at A23; *see also* Democracy N.C., *The Color of Money in Charlotte: July 2002*, *at* http://www.democracy-nc.org/moneyresearch/2002/colormoneyinchltjuly.html (last visited Jan. 26, 2005) ("[A]s former state Treasurer Harlan Boyles has noted, too many of these donors 'expect a return in benefits' on their political investment.") (on file with the First Amendment Law Review).

7. Boyles shared his idea for a ban with key legislators and included it in a memo to Gary Bartlett, Executive Director of the State Board of Elections, dated February 1, 2000. No bill was introduced that incorporated his idea. A less ambitious provision was defeated in a 1998 bill to restructure the state Board of Transportation (House Bill 1304). It said persons giving more than $500 per year to the governor could not serve as members of the state's Board of Transportation, but legislators deleted this provision before passing the bill.

Obviously, a total ban on campaign donations is far more problematic in theory and in practice than a ban on giving cash to voters. Politicians need money to get their message out and to engage in effective speech, but voters do not need money to choose which candidate to support. It would be interesting to trace the history of justifications used for allowing private campaign donations, even donations from corporate non-citizens in some situations. I suspect the practical need for money in the system strongly influenced the reasoning that legitimized private contributions and eventually elevated them to an expression of the donor's free speech. Part II of this article briefly reviews the legal framework under which problems of campaign finance and free speech are analyzed. Part III provides a number of examples of campaign practices in North Carolina to demonstrate that political corruption is not a hypothetical or harmless problem in the state. It also describes features of the state's campaign finance regulations that protect First Amendment rights while making the flow of money more transparent and the purchasing-power advantages of wealthy donors less corrosive. Part IV discusses the advantages of offering public financing for elections, in contrast to "command and control" regulations. This article concludes that it is crucial for policymakers, citizens, watchdog groups, and legal experts to insist that laws to protect free and fair elections be strengthened and not subverted in the name of protecting free speech.[8]

II. LEGAL FRAMEWORK

In its landmark 1976 decision, *Buckley v. Valeo*,[9] the U.S. Supreme Court laid out the consequences of treating campaign contributions as political "speech." In *Buckley* and its progeny, the

---

See Jena Heath, *House Passes DOT Revamp*, NEWS & OBSERVER (Raleigh, N.C.), July 9, 1998, at A3.

8. An excellent resource for preparing appropriate and constitutionally defensible legislation is: BRENNAN CTR. FOR JUSTICE, WRITING REFORM: A GUIDE TO DRAFTING STATE AND LOCAL CAMPAIGN FINANCE LAWS, (Deborah Goldberg ed., 2004 Revised Ed.), *available at* http://www.brennancenter.org/programs/prog_ht_manual.html.

9. 424 U.S. 1 (1976).

Court clarified that the government's interest in regulating campaign money is limited to preventing "actual corruption or the appearance of corruption,"[10] where corruption is understood as *quid pro quo* transactions akin to bribery or extortion.[11] Going beyond this standard infringes on the donor's right to self-expression or the candidate's right to speak effectively to the public.[12] First Amendment absolutists contend that the fuzzy "preventing the appearance of corruption" standard imposes too heavy a burden on the rights of those with money to spend in elections.[13] Others argue that corruption should not only include

---

10. McConnell v. FEC, 540 U.S. 93, 94-95 (2003); FEC v. Mass. Citizens for Life, Inc., 479 U.S. 238, 269 (1986); *Buckley*, 424 U.S. at 26-27.

11. *Buckley*, 424 U.S. at 26-27 ("To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined.").

12. *Id.* at 28. The *Buckley* Court upheld the challenged limitation on political contributions because the law

> focuse[d] precisely on . . . the narrow aspect of political association where the actuality and potential for corruption have been identified while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources.

Id.

13. *See, e.g.*, Lillian R. BeVier, *McConnell v. FEC: Not Senator Buckley's First Amendment*, 3 ELECTION L.J. 127, 130 (2004) ("[F]or the Court to insist that corruption be defined narrowly . . . is for it to erect and maintain a substantial First Amendment barrier to campaign finance regulation. Conversely, for the Court to permit the legislature to adopt or embrace a broader definition is to lower the barrier, perhaps to the point of dismantling it entirely."); James L. Gibson, *BCRA's Assault on the First Amendment: The Death of the Overbreadth Doctrine*, 3 ELECTION L.J. 245, 246 (2004) (arguing that a "majority on the Court ignored the empirical evidence on the overbreadth of BCRA . . . and that as a consequence, the concept of overbreadth has been rendered virtually useless as an empirical construct"); Cecil C. Kuhne, III, *Restricting Political Campaign Speech: The Uneasy Legacy of McConnell v. FEC*, 32 CAP. U. L. REV. 839, 842 (2004) ("What many may find disturbing in the Supreme Court's recent jurisprudence . . . is the notion that largely unproven legislative efforts to prevent vaguely defined concepts of

actual and apparent *quid pro quo* abuse, but also other actions that threaten the integrity of the election system and cause citizens to believe voting is useless or election outcomes are rigged.[14]

Given these competing views, how should policymakers in a state like North Carolina develop a set of campaign finance regulations that balance the right to free speech with the right to a free and fair election? There is no question that lawmakers must give proper deference to the First Amendment, including subjecting many proposals to a "strict scrutiny" test.[15] On the other hand, it is

---

'corruption' or the 'appearance of corruption' are in fact sufficient to justify wholesale infringement of important First Amendment rights.").

14. *See, e.g.*, LARRY L. BERG, HARLAN HAHN & JOHN R. SCHMIDHAUSER, CORRUPTION IN THE AMERICAN POLITICAL SYSTEM 3, 7 (1976) (asserting that the meaning of corruption in the election context must include not only "quid pro quo" abuses, but also conduct that "violates and undermines the norms of the system of public order which is deemed indispensable for the maintenance of political democracy"); Spencer Overton, *Restraint and Responsibility: Judicial Review of Campaign Reform*, 61 WASH. & LEE L. REV. 663, 678 (2004) ("It is practically impossible for legislatures to provide clearly defined exceptions in the text of a statute for all of the varied activities that are less likely to corrupt, or appear to corrupt, the process. [No] bright-line rule . . . capture[s] all activity that implicates the state's interest."). The Supreme Court's frequent linkage in recent decisions between preventing corruption and protecting "the integrity of the election process" points to the relevance of demonstrating a link between problematic practices and a loss of public trust in electoral politics (via polling, academic research, media reports and commentary, public protests, voter nonparticipation, etc.). *See, e.g., McConnell*, 540 U.S. at 136 (2003) ("Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits—interests in preventing 'both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption.'"). Corruption is not limited to what happens between money suppliers and recipients; most dangerous is corruption of the election process itself, the distortion of fair elections and dissolution of a system of self-government.

15. Whenever a "fundamental right" such as the right to free expression is potentially infringed by government action, courts will assess the constitutionality of the law using "strict scrutiny," which requires that the law in question be "narrowly tailored" to further a "compelling" government interest. *See, e.g.*, Palmore v. Sidoti, 466 U.S. 429, 432-33 (1984) (stating that the law would be constitutional only if "justified by a compelling government interest" and "'necessary . . . to the accomplishment' of that legitimate

absolutely crucial for policymakers to examine closely the actual characteristics of campaign behavior in their jurisdiction rather than become trapped in a thicket of legal theory. For example, an advocate for unfettered speech by "independent expenditure" committees can logically argue that they should not be subjected to burdensome disclosure or contribution limits because they have little chance of corrupting a candidate.[16] After all, as a matter of definition, they are "independent" and "not coordinated" with the candidate or the candidate's opponent and therefore provide no nexus for actual or apparent corruption. However, on closer examination of real world situations, it turns out that sponsors of these committees and their donors are often in communication with political leaders who greatly influence the strategy of candidates targeted by the committee.[17] Therefore, policymakers have a

---

interest") (citing McLaughlin v. Florida, 379 U.S. 184, 196 (1964) and Loving v. Virginia, 388 U.S. 1, 11 (1967)); Roe v. Wade, 410 U.S. 113, 155 (1973) (internal citations omitted) ("Where certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest,' and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake."). Commentators have suggested however, that in cases involving campaign finance and speech rights, the Court appears to apply a somewhat less rigorous standard to determine the constitutionality of campaign reform laws. *See, e.g.*, Richard L. Hasen, *Buckley is Dead, Long Live Buckley: The New Campaign Finance Incoherence of McConnell v. Federal Election Commission*, 153 U. PA. L. REV. 31, 42-43 (2004) (noting that in campaign finance cases, "the Court ratcheted down the level of scrutiny ... to one in which interests need only be "sufficiently important" and not narrowly tailored to the government's interest").

16. An "independent" or "nonconnected" committee is a "political committee that is *not* a party committee, an authorized committee of a candidate or a separate segregated fund established by a corporation or labor organization .... [They] are commonly called 'political action committees' or PACs...." FED. ELECTION COMM'N, CAMPAIGN GUIDE FOR NONCONNECTED COMMITTEES 3 (2002), *available at* http://www.fec.gov/pdf/nongui.pdf.

17. The FEC itself announced that even "leadership PACs," which are created by political leaders "to support candidates for various ... offices" and are "associated with a candidate for federal office[,] ... nonetheless may remain legally unaffiliated with the candidate's principal campaign committee and operate under the same rules as other nonconnected committees." *Id.* (citing the following FEC Advisory Opinions: AO 2000-12, AO 1991-12, AO

legitimate interest in regulating so-called independent committees in a manner that is consistent with regulation of committees that donate directly to candidates. Such regulation appropriately reflects the realities of campaign behavior and the government's interest in protecting a fair election.

Crafting statutes suited to practical reality as well as legal theory is not only a good idea, it is the lawmakers' duty and obligation. In fact, two recent landmark decisions by the U.S. Supreme Court in the field of campaign-finance regulation, *Nixon v. Shrink Missouri Government PAC*[18] and *McConnell v. Federal Election Commission*,[19] emphasize the importance of policymakers looking at real world conditions and fashioning a balance of rights that addresses those conditions. For a generation, courts have distinguished "express advocacy" for or against the election of a candidate, which is subject to regulation, from "issue advocacy,"

1986-06, AO 1985-40 and AO 1978-12). A decision by the U.S. District Court for the Eastern District of North Carolina illustrates how a preoccupation with definitions can obscure real dangers. N.C. Right to Life, Inc. v. Leake, 108 F. Supp. 2d 498 (E.D.N.C. 2000). The district court judge invalidated a North Carolina statute that limited contributions to independent expenditure committees (IECs), but only after defining away the State's "strongest evidence" of "corruptive" behavior by a committee. N.C. Right to Life, Inc. v. Leake, No. 5:99-CV-798-BO(3) at 19-20 (E.D.N.C. Oct. 24, 2001) (order granting Plaintiff's motion to dismiss) (on file with the First Amendment Law Review). According to the district court, the "strongest evidence" of potentially corruptive behavior was the claim that a group of hog farmers called Farmers for Fairness had "'threatened the legislative leadership that it would run advertisements' in 'retaliation for votes against the hog industry....'" *Id.* (rejecting the State's argument that corruption is encouraged by permitting unlimited contributions to independent expenditure committees, which "threaten legislative leadership" with the possibility of retaliatory negative campaign ads). In an earlier case involving Farmers for Fairness, the Fourth Circuit had held that the group did not engage in express advocacy "in explicit words" and therefore did not meet the definition of an IEC. Perry v. Bartlett, 231 F.3d 155, 158-59 (4th Cir. 2000). The district court judge in *Leake* cited *Perry* as the source of his conclusion that: "[T]he Fourth Circuit held that the actions of Farmers for Fairness were not 'corruptive,' but, rather, constituted protected speech under the First Amendment." *Leake*, No. 5:99-CV-798-BO(3) at 20 (citing *Perry*, 231 F.3d 155). Presto, the evidence of corruptive behavior disappeared.

18. 528 U.S. 377 (2000).

19. 540 U.S. 93 (2003).

which does not directly urge the election or defeat of a specific candidate and is therefore exempt from regulation. Many courts (especially those in the Fourth Circuit) have distinguished these two categories using a simple test of whether or not the advertisement in question contained any of the so-called "magic words" identified in *Buckley*.[20] The overall message and context did not matter in these cases; legal doctrine maintained an advertisement could never be "express advocacy" unless it used certain words. In the 2003 *McConnell* decision, the Supreme Court firmly dismissed this simple-minded standard and upheld the right of Congress to respond to real world campaign practices by designing reasonable regulations of paid speech that is electioneering even though it lacks "magic words."[21] The Court noted that although "the distinction between 'issue' and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects. Both were used to advocate the election or defeat of clearly identified federal candidates, even though the so-called issue ads eschewed the use of 'magic words.'"[22] In the same decision, the Court upheld new regulations imposed on "soft money" fundraising practices and "soft money" committees because lawmakers had

---

20. *See, e.g.*, N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 425 (4th Cir. 2003) (rejecting, among other provisions, N.C. Gen Stat. § 163-278.14A(a)(2) for violating the "magic words" test for express advocacy); Va. Soc'y for Human Life, Inc. v. FEC, 263 F.3d 379, 392 (4th Cir. 2001) (holding that "express advocacy" only occurred with the use of certain specific words such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," and "reject"); *Perry*, 231 F.3d at 161 (vigorously rejecting the State's argument that if "the purpose of the advertisement is to defeat a particular candidate, regulation . . . is constitutional . . . even if the advertisement itself does not contain words of express advocacy"); FEC v. Christian Action Network, Inc., 110 F.3d 1049, 1052-55 (4th Cir. 1997) (*CAN II*) (outlining Court of Appeals cases involving "a string of losses in cases between the FEC and issue advocacy groups over the meaning of the phrase 'express advocacy'").

21. *McConnell*, 540 U.S. at 192-93 (The "class of magic words were born of an effort to avoid constitutional infirmities [of the statute at issue in *Buckley*]. [T]hey in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech.").

22. *Id.* at 126.

every right to respond to the overwhelming evidence that such practices and entities damaged the integrity of the election process; *by definition*, "soft money" may not go to the election committee of a federal candidate, but *in reality* its solicitation and spending had become a nexus for exactly the kind of corruption that government regulation was meant to stop.[23]

III. FREE SPEECH AND FAIR ELECTIONS IN NORTH CAROLINA—A CASE STUDY

What are the real world conditions in North Carolina politics that policymakers must address as they balance rights and responsibilities? North Carolina enjoys a reputation for "good government," but there is mounting evidence that the increased pressure to raise campaign money in a competitive political climate is inflating the importance of private donors and pushing various players to the line between legal and illegal activity, if not over it.

A. Penalties for Illegal Contributions

In 1996, A. Stephen Pierce, then the owner of the largest rest-home chain in North Carolina, violated the state's $4,000-per-election contribution limit by funneling at least $101,000 through various associates and family members to four state-level officials running for re-election.[24] Pierce delivered the illegal money to his chosen candidates in the form of cashier checks with the names of "straw donors" in the memo line. According to financial records obtained by the State Bureau of Investigation, Pierce wrote checks

---

23. *Id.* at 127 ("The solicitation, transfer, and use of soft money thus enabled parties and candidates to circumvent FECA's limitations on the source and amount of contributions in connection with federal elections.").

24. Bob Geary, *Inside or Out; The Democratic Race for Lieutenant Governor Offers a Choice Between Youth and Experience*, INDEP. WKLY (Durham, N.C.), Mar. 29, 2000, at 14; Christopher Quinn & David Rice, *SBI Lodges Charges Against Rest-Home Owner*, WINSTON-SALEM J., Mar. 7, 1998, at A1 [hereinafter *SBI Lodges Charges*]; David Rice & Christopher Quinn, *DA Asks 4 to Forfeit Contributions*, WINSTON-SALEM J., May 7, 1999, at A1 [hereinafter *Contributions*].

on several occasions to his bank for up to $40,000, received a series of cashier checks for $4,000 or less, and made it look as if each cashier check originated from a different individual.[25] No evidence indicated any of the candidates knew they were accepting illegal contributions.[26] Democracy South became suspicious of the donations because several were listed on the candidates' disclosure reports with phony addresses for the donors. Following a complaint by Democracy South and a lengthy investigation, Pierce was convicted on misdemeanor charges in 1999 and fined $6,000.[27] The four elected officials turned over the $101,000 in illegal donations to the state, but kept at least $54,000 in other contributions from various Pierce-related donors.[28]

Steve Pierce ranked among the state's most prolific political fundraisers and contributors for many years before the investigation. He and his family and employees gave well over $250,000 to North Carolina candidates and political committees from 1991 through 1996.[29] He founded the rest-home industry's

---

25. N.C. State Bureau of Investigation, *Analysis of 1996 and 1997 Campaign Reports for Contributions Related to A. Stephen Pierce,* Case No. 1998-00031 (1998) (on file with the First Amendment Law Review); *see also* Chris Fitzsimon, *Campaign Finance Reform Overdue*, TRIANGLE BUS. J., Apr. 10, 1998, at 51 ("The charges are that Steve Pierce used money from his business to reimburse several people who made large contributions to the campaign treasury of Sen. Beverly Perdue."), *available at* http://triangle.bizjournals.com/triangle/stories/1998/04/13/editorial3.html; Rice & Quinn, *supra* note 24 (reporting that District Attorney Tom Keith wanted four prominent state politicians to give up $101,000 in illegal campaign contributions made by A. Stephen Pierce).

26. *SBI Lodges Charges*, *supra* note 24; *Contributions*, *supra* note 24.

27. Democracy South, *Democracy South Calls for Investigation of Possible Money Laundering of Corporate Campaign Contributions*, *at* http://www.democracy-nc.org/moneyresearch/1997/corpcampmoneylaund.html (June 2, 1997); Martin Kady, *Two Broke Donations Law,* WINSTON-SALEM J., Oct. 22, 1999, at A1; John Wagner, *Former Owner of Rest Home Fined $6,000 for Donation*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 22, 1999, at A3.

28. Press Release, Democracy South, New Evidence of Steve Pierce Bundling Involves $200,000 to Hunt, Wicker and Key Republicans (Mar. 9, 1998), *available at* http://www.democracy-nc.org/moneyresearch/1998/newevidence.html.

29. David Rice & Christopher Quinn, *Industry's Reach Well-Known,*

political action committee and is credited with increasing the industry's clout with the state officials who regulate the industry and set the rate of public-assistance payments for its large number of low-income residents.[30] From 1991 through 1996, industry-related donors gave $1.6 million to state candidates and political committees, and the volume of tax dollars going to adult-care homes soared by $530 million *per year*; meanwhile, advocates for the elderly were unable to get lawmakers to increase the minimum staffing requirements in those homes.[31] In 1998, the Senate Appropriations Committee, then co-chaired by a major recipient of Mr. Pierce's contributions, gave the industry another rate hike in a last-minute "budget mystery," while ignoring a bill to increase staffing.[32]

The Pierce case highlighted several practical problems with North Carolina's campaign finance regulations. First, state law made it illegal for a candidate to knowingly accept a donation "made in the name of another" person, but did not penalize the donor.[33] That flaw was corrected through a 1999 amendment to

---

WINSTON-SALEM J., Mar. 10, 1998, at A1.

30. *Id.* *See* Eric Bates, *Grey Gold: Mining the Golden Years,* INDEP. WKLY (Durham, N.C.), Apr. 30 to May 16, 1997 (three part series discussing political contributions and the rest-home industry's clout); Karen Garloch, *Report Blasts Rest Home Profit Margins,* CHARLOTTE OBSERVER, May 1, 1997, at C2; John Hechinger, *Getting Rich on Rest Homes?,* CHARLOTTE OBSERVER, May 7, 1995, at A1; Phoebe Zerwick & Christopher Ryan, *Homes' Patients Suffer, Critics Say,* WINSTON-SALEM J., Mar. 26, 1995, at A1.

31. Bates, *supra* note 30; Sue Sturgis, *Grey Gold: Wages of Caring,* INDEP. WKLY (Durham, N.C.), May 7, 1997, at 12-13 (discussing chronically low staffing requirements, unchanged in years: in rest homes, "one aide for every 50 residents" during the night shift and, in nursing homes, enough personnel "to provide 2.1 hours of staff time per patient per day").

32. Jena Heath, *Rest Home Lobby Offers Clue to Budget Mystery,* NEWS & OBSERVER (Raleigh, N.C.), July 3, 1998, at A1; *Priorities for the Elderly, Who Will Speak for Their Safety?,* CHARLOTTE OBSERVER, July 8, 1998, at A10; *Under the Dome: Perdue Gets Flak Over Funding,* NEWS & OBSERVER (Raleigh, N.C.), July 10, 1998, at A3.

33. The statute merely prohibited a "candidate, political committee, referendum committee, political party or treasurer" from "*knowingly accept[ing]* any contribution made . . . in the name of another person or made anonymously." N.C. GEN. STAT. § 163-278.14(a) (1999) (emphasis added), *amended by* Campaign Reform Act of 1999, sec. 4(a), § 163-278.14, 1999 N.C.

Section 163-278.14 of the General Statutes of North Carolina, which provided that "[n]o individual, political committee, or other entity shall make any contribution anonymously . . . or in the name of another."[34] Violation of the provision is a Class Two misdemeanor.[35] Second, all criminal violations of campaign finance laws had a statute of limitations that expired two years after the violation occurred,[36] but because campaign reports were often not processed by the State Board of Elections for more than a year, potential problems routinely went undetected.[37] In the Pierce case, the district attorney rushed to file the first charges against Pierce just as the statute of limitations expired. Campaign reformers and the Association of District Attorneys proposed making some campaign abuses subject to felony prosecution, as well as lengthening the statute of limitations on the misdemeanor offenses.[38] Finally, in 2001, the statute of limitations was amended to define the two years as running "from the day the last report is due . . . for the election cycle for which the violation occurred."[39] This change had the effect of extending the statute of limitations by

---

Sess. Laws 453.

34. Campaign Reform Act of 1999, sec. 4(a), § 163-278.14, 1999 N.C. Sess. Laws 453.

35. N.C. GEN. STAT. § 163-278.27(a) (2003). Prior to that change, the district attorney who prosecuted Pierce could only charge him with violating another statute that prohibits an individual from giving more than $4,000 to a candidate in an election. *Id.* § 163-278.13.

36. Prior to amendment of the campaign finance laws, the applicable statute of limitations was determined by the provision that requires "all misdemeanors" to be "presented or found by the grand jury within two years after the commission of the same." N.C. GEN. STAT. § 15-1 (2003).

37. Due to a lack of funding and staffing, the State Board of Elections has frequently been unable to fulfill the statutory mandate for timely processing of reports. N.C. GEN. STAT. § 163-278.24 (2003) ("Within four months after the date of each election or referendum, the Executive Director shall examine or cause to be examined each statement filed with the Board under this Article, and, referring to the election or referendum, determine whether the statement conforms to law and to the truth.").

38. *See* Jena Heath, *Going Against Grain, DA Takes on 'Bundling' Case*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 15, 1998, at B1; David Rice, *Gift Horse: Blind Eye Turned on Handouts*, WINSTON-SALEM J., Oct. 22, 1999, at A1; *Contributions*, *supra* note 24.

39. N.C. GEN. STAT. § 163-278.27(a) (2003).

about a year and making prosecution more possible.

A third change in North Carolina law that flowed from the Pierce case involved the introduction of steep civil fines for illegal campaign contributions. A new provision adopted in 2001 gave the State Board of Elections the means to pursue violators through civil proceedings, rather than waiting for a local district attorney to become interested enough to file criminal misdemeanor charges.[40] If the new law had been in place when Pierce gave $101,000 illegally, he could have faced a civil fine of three times that amount or $303,000 – a substantial increase from the $6,000 criminal fine for his misdemeanors. A companion to the new provision gave the Board authority to require the violator "to cease and desist" further activity and authority "to take any remedial action deemed appropriate."[41] Nevertheless, the persistence of illegal donations suggests that those responsible for enforcing North Carolina campaign laws should have investigative and prosecutorial powers to charge egregious violators with even stiffer penalties, including felonies with possible prison time.

A complaint filed by Democracy North Carolina with the State Board of Elections in June 2004 illustrates the need for tougher enforcement. Extensive research into contributions from donors related to the video-poker industry led us to conclude that "an industry described as 'the crack cocaine of gambling' aims to use its illegal profits to gain political protection" by plying politicians with sizeable (but illegal) contributions.[42] By state law, large video consoles with various card games are allowed to entertain and pay off winners at the corner store or bar with no more than $10 worth of merchandise per day,[43] but the machines

40. *Id.* § 163-278.34(b).

41. *Id.* § 163-278.34(c).

42. Complaint by Bob Hall, Research Director, Democracy N.C., to the N.C. State Bd. of Elections (Jun. 29, 2002), *available at* http://www.democracy-nc.org/moneyresearch/2004/VideoPokerComplainJune2002revised.pdf. *See also* David Plotz, *Flushed: Why South Carolina Killed Its Gambling Industry*, SLATE MAG., *at* http://slate.msn.com/id/36673 (Oct. 15, 1999) ("[v]ideo poker, which is fast and requires skill, is known as "video crack because it is by far the most addictive form of gambling").

43. N.C. GEN. STAT. § 14-306(b) (2003).

have become electronic bandits in backroom gambling syndicates that offer cash prizes and take in more than $100 million a year in North Carolina.[44] Federal and state law enforcement officials have pushed for a complete ban of the machines, especially after thousands more arrived from South Carolina in 2000, when that state's supreme court ruled the games illegal.[45] The State Senate in North Carolina has repeatedly passed bills to outlaw the games, but each bill dies in the State House because of well-publicized opposition from Speaker Jim Black (D-Mecklenburg County).[46] In the 2002 election, donors tied to the video-poker industry

---

44. The $100 million figure is considered very conservative by law enforcement officials. It is based on the industry's declared revenues of $26.9 million in the first quarter of 2001, reported in: N.C. DEPT. OF REVENUE, TAX RESEARCH DIV., VIDEO GAMING REPORT, 2001: FIRST QUARTER ACTIVITY (2001) (compiling information reported to the Department of Revenue by video poker machine owners in a report submitted quarterly to the Joint Legislative Commission on Governmental Operations) (on file with the First Amendment Law Review). *See also* Karen Cimino, *Sheriffs Are Angry About Video Poker,* CHARLOTTE OBSERVER, Aug. 19, 2001, at A1 (reporting that the industry's revenues for the first quarter were more than $26 million, and during that three month period, $4.5 million was spent on the machines in just three counties).

45. *See* Joytime Dist. & Amusement Co. v. South Carolina, 528 S.E.2d 647, 657 (S.C. 1999) (upholding legislative ban on video gaming as constitutional). *See also* Wade Rollins, *Legislation Aims to Block Invasion of Video Poker from S.C.*, NEWS & OBSERVER (Raleigh, N.C.), June 21, 2000, at A3. Law enforcement officials have clearly stated their opposition to video poker: "It is the position of the North Carolina Sheriff's Association . . . that video gaming machines should be completely outlawed in North Carolina." N.C. SHERIFFS ASS'N, REPORT TO THE JOINT LEGISLATIVE COMMITTEE ON GOVERNMENTAL OPERATIONS, VIDEO GAMING MACHINES: COST OF REGISTRATION & ENFORCEMENT 2 (2001), *available at* http://www.ncsheriffs.org/legislative/Video.Gaming.Machines.pdf.

46. *See* Jack Betts, *Place Your Bets on Investigation of Video Poker,* CHARLOTTE OBSERVER, Sept. 26, 2004, at P1; Sharif Durhams, *Poker Probe Nets Donor,* CHARLOTTE OBSERVER, Sept. 23, 2004, at A1; *Big Jackpot: Why Is Jim Black Protecting Video Poker?,* FAYETTEVILLE OBSERVER, Dec. 23, 2003, at A6; *Black Leads in Video Poker Donations,* FAYETTEVILLE OBSERVER, Dec. 22, 2003, at B3; *Is Black Honest? Place Your Bets,* WILMINGTON STAR-NEWS, Dec. 23, 2003, at E6; Associated Press, *Video Poker Owner Pulls Out Machines*, http://www.news14charlotte.com/shared/print/default.asp?ArID=82458 (Dec. 27, 2004).

contributed more than $120,000 to Black, twice what he got from the industry's donors in the 2000 cycle and far more than any other legislative candidate ever received. The Democracy North Carolina complaint documented how a significant number of the contributions "came from donors who say they were unaware that a relative or friend in the video-poker business apparently made a political donation in their name ... [or] came from donors who admit they were paid or reimbursed for making a political donation to help an associate in the video-poker industry."[47] At the time of this writing, the State Board of Elections and U.S. Attorney's office are investigating what the complaint calls "a pattern of political corruption [that] permeates the industry, from officials in key positions of its trade association to 'mom-and-pop' distributors to owners of the corner store that profit from the industry's illegal gambling operations."[48] Democracy North Carolina's research indicates that the industry's leaders have long viewed collecting and giving political contributions as integral to getting things they want from government. As long as the heaviest punishment is a fine and misdemeanor penalty, too many wealthy special interests like the video poker industry will choose to violate campaign finance laws rather than lose the access and influence the illegal contributions seem to produce. The video-poker complaint has fortunately attracted the interest of federal officials who have the flexibility to introduce felony charges and the tools of a grand jury investigation. But as a complaint before state officials, it faces the familiar problems of a short statute of limitations, meager investigative resources, and relatively weak penalties. North Carolina has made

47. Complaint by Bob Hall, *supra* note 42 (asking the State Board of Elections to use its statutory authority to investigate certain campaign contributions related to the video-poker industry).

48. *Id.* A pattern of political corruption associated with the video poker industry was apparent in South Carolina before the games were prohibited. After Republican Governor David Beasely unsuccessfully attempted to ban video poker, the industry contributed at least $3 million to defeat his reelection. The video poker industry is estimated to have contributed nearly seventy percent of the Democratic gubernatorial candidate's "war chest," and he ultimately won the election. The chairman of the South Carolina Democratic Party at that time was also the leading attorney for the video poker industry. Plotz, *supra* note 42.

progress in each of these areas, but has plenty of room for improvement. Neither free speech nor fair elections can be protected by an under-funded campaign enforcement agency or by a set of laws that lack real teeth.

B. Electioneering Versus Issue Advocacy

In April 1998, a political consultant for a group of major North Carolina hog producers told the State Board of Elections that his client, Farmers for Fairness, was spending approximately $10,000 a week on advertisements against state Rep. Cindy Watson (R-Duplin County) because she had helped lead an effort to increase regulation of the hog industry.[49] The wording in the advertising was shaped by responses to a telephone poll asking voters in Watson's district, "Would you be more likely or less likely to *vote for* Cindy Watson if you knew [a variety of characteristics about Watson]?"[50] Farmers for Fairness, whose membership remained anonymous, said it did not need to file campaign disclosure reports because it was engaging in protected "issue advocacy" and its activities were therefore outside the jurisdiction of the State Board of Elections. An attorney for the group later admitted to a federal judge that its advertising was designed to help defeat Watson's bid for reelection, but he contended that since the ads lacked the "magic words" of express advocacy, they were genuine issue ads and not subject to regulation.[51] Rep. Watson

---

49. In Re: Complaint of Rep. Cynthia B. Watson & Steven Rader about Farmers For Fairness, Inc. 7-8 (N.C. State Bd. of Elections, June 23, 1998) (unpublished agency order) (on file with the First Amendment Law Review) [hereinafter Farmers for Fairness Order]. *See also* Jena Heath, *10th District Race Divides Hog Country*, NEWS & OBSERVER (Raleigh, N.C.), May 2, 1998, at A1 (reporting on the embittered Republican primary race for the N.C. House of Representatives in which Rep. Watson was targeted for defeat by the hog industry).

50. Farmers for Fairness Order, *supra* note 49, at 6-7.

51. In a July 1998 hearing on Farmers For Fairness' appeal of the State Board of Election's ruling that it was a political committee subject to regulation, U.S. District Court Judge W. Earl Britt addressed Farmers For Fairness attorney James Bopp: "You just admitted that your purpose was to defeat [Watson] . . . . But your contention is that as long as you don't use those

narrowly lost the primary election in May 1998 by a vote count of 787 to 768. Two of the three other legislators (all Republicans) targeted by Farmers for Fairness were defeated in the general election. As a result, the Democrats regained the majority in the State House, and the Republican leaders then feuding with the hog industry lost their power.

Data obtained from broadcast stations and Farmers for Fairness show it spent $2.6 million for advertising in the twelve months ending May 31, 1998. In just four months – from February through May 1998 – it spent more than $100,000 for ads broadcast on one New Bern television station, which covers Rep. Watson's legislative district. In fact, the large outlays of money by Farmers for Fairness during the 1998 primary exceeded all spending by either of the state's major political parties in that period. Many of the print and broadcast ads did not name specific candidates, but a great many did. The muscular spending and success of Farmers for Fairness brought home to North Carolina the real problem of the election process being completely overwhelmed by a secretive, unregulated, wealthy special interest group. The identity of Farmers for Fairness' backers ultimately emerged: About a dozen hog industry multi-millionaires set up and financed the group as a nonprofit trade association with "dues" from their corporations that they wrote off as tax-deductible expenses.[52] The association's accountant explained that the tax benefits meant the companies could purchase one million dollars worth of attack ads at a net cost to its members of about $650,000.[53] Could there be a clearer

---

words, you can't be regulated?" "That's correct," Bopp answered. Steve Ford, *Hog Farmers' Money and the 'Magic Words,'* NEWS & OBSERVER (Raleigh, N.C.), July 12, 1998, at A24.

52. Kristen B. Mitchell, *IRS Probe Sought on Hog Barons*, WILMINGTON MORNING STAR, Aug. 4, 1998, at B1; *see also* Press Release, N.C. Alliance for Democracy, Millions Spent By Farmers For Fairness Prompts Call For "Issue Ad" Regulation (Feb. 25, 1999) *available at* http://www.democracy-nc.org/moneyresearch/1999/millionsspentbyfff.html.

53. Interview with A.E. Strange, Jr., Accountant, Williams, Overman, Pierce, in Raleigh, N.C. (Fall 1998); *see also* Steve Ford, *This Flood is Green – And You Can Spend It*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 7, 1999, at A24 ("[M]embers [of Farmers for Fairness] were allowed to take tax deductions on a large part of what they contributed. This tax accounting had

perversion of the First Amendment's protection of robust debate? Simply because they steered clear of a few key words, this handful of wealthy businessmen were able to engage in electioneering, escape regulation, gain a tax advantage, keep their identity secret, and swamp a candidate whose own fundraising was tightly regulated.

In reaction to the real-world threat that phony issue advocacy groups posed to a fair election, the North Carolina General Assembly passed a new statute in 1999 designed to regulate electioneering communication, whether or not it used the "magic words" described in the *Buckley* decision.[54] That statute has been challenged in a series of court cases that continue at this writing. The new statute says that the *financing* of electioneering communications should be regulated, and it defines such communications as those that either (1) contain the "magic words" or phrases of express advocacy or (2) "whose essential nature expresses advocacy to the general public and goes beyond a mere discussion of issues in that they direct voters to take some action to nominate, elect, or defeat a candidate in an election."[55] The second part of the definition also describes "contextual factors" that may be examined if "the course of action is unclear."[56] Its construction tracks language in the *F.E.C. v. Furgatch*[57] and *Massachusetts*

---

the effect of giving the farmers a big discount on their ad purchases – a discount subsidized by the public.").

54. N.C. GEN. STAT. § 163-278.14A (2003).

55. *Id.* § 163-278.14A(a).

56. *Id.* § 163-278.14A(a)(2).

57. 807 F.2d 857, 864 (9th Cir. 1987) (holding that pre-election newspaper advertisement that included various criticisms of President Carter followed by the repeated refrain "don't let him do it," was express advocacy, because there was "no doubt that the ad ask[ed] the public to vote against Carter"), *cert denied*, 484 U.S. 850 (1987). The Ninth Circuit proposed the following standard for express advocacy:

> [S]peech need not include any of the words listed in *Buckley* to be express advocacy . . . but it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate.

Id.

Citizens for Life[58] decisions. However, because it goes beyond the bright line test of whether or not "magic words" are present, Judge Terrence W. Boyle of the U.S. District Court for the Eastern District of North Carolina and the Fourth Circuit Court of Appeals have repeatedly ruled the second part of the definition unconstitutional.[59]

Without detailing the legal arguments, three points are relevant to this discussion. First, legislators were clearly responding to a proven danger to the integrity of the election process when they passed Section 163-278.14A of the General Statutes of North Carolina.[60] To take no action given that real danger would have been irresponsible. Second, they attempted to balance protections for free speech and free elections by giving specific standards and focusing on the financing of the communications. Contrary to propaganda from the National Rifle Association and other opponents of regulating bogus issue advocacy, the statute did not muzzle the free speech of anyone, nor did it prohibit any content from being broadcast.[61] It simply said that any electioneering

---

58. FEC v. Mass. Citizens for Life, Inc., 479 U.S. 238, 249-50 (1986) ("The fact that [a] message is marginally less direct than 'Vote for Smith' does not change its essential nature. The [newsletter at issue] goes beyond issue discussion to express electoral advocacy. The disclaimer of endorsement cannot negate this fact." Expression of this sort may be regulated when "it represents express advocacy of the election of particular candidates distributed to members of the general public."). *See also* N.C. GEN. STAT. § 163-278.14A (2003).

59. *See* Perry v. Bartlett, 231 F. 3d 155 (4th Cir. 2000) (holding that N.C. provision allowing regulation of issue advocacy when the speaker showed "intent to advocate election or defeat of a candidate" was unconstitutionally overbroad); Leake v. N.C. Right to Life, Inc., 108 F. Supp.2d 498 (E.D.N.C. 2000) (holding the express advocacy test that allows for consideration of context, along with several other N.C. election law provisions, unconstitutional and enjoining the State from enforcing those provisions), *aff'd* 344 F. 3d 418 (4th Cir. 2003), *vacated by* __ U.S. __, 124 S. Ct. 2065 (2004) (mem.) (remanding for reconsideration in light of the decision in *McConnell*).

60. N.C. GEN. STAT. §163-278.14A (2003).

61. The National Rifle Association (NRA) activated its members against federal regulation of bogus issue ads with scare tactics like this message on its web site: "Campaign finance reform, especially under the guise of S. 27 – the McCain-Feingold legislation that passed the U.S. Senate in April – is a direct attack on every individual American's First Amendment right to use political

communication must be paid for with regulated money (from regulated sources, in regulated amounts, with regulated disclosure), just like communications sponsored by a candidate or political party. Third, the wisdom of enacting this type of statute is finally becoming evident, because the Supreme Court's *McConnell v. FEC* decision specifically upholds the right of legislators to regulate electioneering activity that lacks the "magic words."[62]

Because of the *McConnell* ruling, the lower courts are again (as of early 2005) reviewing their decisions regarding the constitutionality of Section 163-278.14A of the General Statutes of North Carolina.[63] The end result should inform policymakers how, if at all, the statute should be rewritten, because North Carolina has a continuing need for effective tools that address spurious issue

---

speech to protect the entire Bill of Rights." The legislation "clearly is an attack on the First Amendment," would "put the NRA out of business" and "could mean prison terms for officials of organizations like the NRA and their employees simply for attempting to exercise the group's collective First Amendment rights." *See* JAMES O. E. NORELL, NAT'L RIFLE ASS'N INST. FOR LEGISLATIVE ACTION, THE MCCAIN-FEINGOLD BILL: PUTTING A MUZZLE ON THE FIRST AMENDMENT (2001), *available at* http://www.nraila.org/media/misc/muzzle.htm. NRA Executive Vice President Wayne LaPierre issued the call to arms: "The NRA's 4 million members should be proud to be a special interest group. Our special interest? Saving the Second Amendment to the United States Constitution. Now we are called upon to save the First Amendment. That's our special interest as well." *Id. See also*, Sharon Theimer, *NRA Seeks Status as News Outlet,* WASH. POST, Dec. 7, 2003, at A9 (reporting that the NRA was "looking to buy a television or radio station and declare that it should be treated as a news organization, exempt from spending limits in the campaign finance law").

62. McConnell v. FEC, 540 U.S. 93, 194 (2003). The *McConnell* Court explained:

> Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad.... Buckley's magic-words requirement is functionally meaningless.

Id.

63. N.C. GEN. STAT. §163-278.14(A) (2003).

advocacy. Fortunately, in light of *McConnell,* the State Board of Elections has begun to more aggressively apply the first part of the definition (where some sort of "magic words" are present) to regulate the financing of ads that previously would be viewed as unregulable (such as an ad promoting the candidacy of Patrick Ballantine in 2004, sponsored by the national Republican Governors Association).[64] In addition, the General Assembly adopted a new law to regulate electioneering in July 2004 that more closely follows the time-limitations and other criteria in the federal statute upheld in *McConnell.* That law also focuses on the financing of ads that name a candidate, but it only applies to communications in statewide and legislative races;[65] it should be extended to cover activity in local and district elections.

C. Corporate Intervention in Elections

For more than seventy years, North Carolina policymakers have taken steps to regulate the ways corporations can influence elections.[66] Courts have long recognized the difference between allowing a corporation to manage a PAC that is financed with the personal contributions of its executives, and letting a corporation use the money it amasses in the economic marketplace to obtain an unfair advantage in the political marketplace.[67] Compared to other

---

64. In re: Republican Governor's Association (N.C. State Bd. of Elections Oct. 13, 2004) (unpublished agency order) (on file with the First Amendment Law Review). *See* Sharif Durhams, *Group Gets Record Fine for Pro-Ballantine Ad*, CHARLOTTE OBSERVER, Sept. 10, 2004, at A1.

65. N.C. GEN. STAT. § 163-278.80(2) (2003).

66. While many of North Carolina statutes regulating campaign contributions stem from the post-Watergate era, the prohibition against corporate donations to political campaigns goes back to 1931. *See* N.C. GEN. STAT. §163-278.15 (2003).

67. FEC v. Mass. Citizens for Life, Inc., 479 U.S. 238, 257 (1986) ("This concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of political ideas."). *See also* Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 659-660 (1990) (recognizing a state's interest in protecting against "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas"); FEC

states, North Carolina laws provide among the clearest prohibition against corporations, unions, and trade associations using funds from their treasuries to contribute to candidates or political parties.[68] Nevertheless, politicians continue to find new ways to solicit money from union and business treasuries, and corporations continue to find ways to contribute. As a consequence, policymakers must remain vigilant and adapt state law to address the new channels through which this money flows.

In 1998, the Republican House leadership in North Carolina was accused by top hog producers of pressuring them for political donations in return for favorable legislative treatment. While both sides agreed they discussed fundraising and legislation at several meetings, a direct link between money and policy was not established in a special hearing held by the State Board of Elections in May 1998.[69] Revelations of those meetings provoked a stream of

---

v. Nat'l Right to Work Comm'n, 459 U.S. 197, 207 (1982) (finding a compelling government interest in ensuring that "substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization . . . not be converted into political 'war chests' which could be used to incur political debts from legislators").

68. *See* N.C. GEN. STAT. §163-278.19 (2003) ("[I]t shall be unlawful for *any* corporation, business entity, labor union, [or] professional association . . . *directly or indirectly* . . . [t]o make *any contribution* to a candidate or political committee . . . or to make *any expenditure* to support or oppose the nomination of a . . . candidate.") (emphasis added). *See also* N.C. GEN. STAT. §163-278.15 (2003) ("No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina.").

69. *See* Joe Neff, *Legislators Tell of Clash on Hog Gifts,* NEWS & OBSERVER (Raleigh, N.C.), Apr. 9, 1998, at A1; Wade Rawlins, *Brubaker Denies Linking Hog Rules to Gifts,* NEWS & OBSERVER (Raleigh, N.C.), May 30, 1998, at A1; Wade Rawlins, *Errant Witness Set Tone for Hog Hearing,* NEWS & OBSERVER (Raleigh, N.C.), May 28, 1998, at A1; Wade Rawlins, *Farmers Gave GOP Donations,* NEWS & OBSERVER (Raleigh, N.C.), May 27, 1998, at A1; Wade Rawlins, *Hog Farmers' Charges Rejected,* NEWS & OBSERVER (Raleigh, N.C.), May 31, 1998, at A1; David Rice, *Board Clears Brubaker, Others in Fund-Raising Case,* WINSTON-SALEM J., May 31, 1998, at A1; David Rice, *Fund-Raising Accusations Repeated,* WINSTON-SALEM J., May 28, 1998, at A1. The incident was also the subject of editorial commentary, for example: *Politics Make for Vengeful Bedfellows,* NEWS & RECORD (Greensboro, N.C.), Apr. 9, 1998, at A10; *Under the Big Top,* NEWS &

public comment on the apparent corrupting influence of political contributions, even though a specific *quid pro quo* was never proven. During the Board of Elections hearing, I furnished the Board with information about more than $120,000 that the House Republican leadership solicited from North Carolina companies and hog industry executives, which was sent to "soft money" accounts of the Republican National Committee (RNC).[70] Some of those donations did not show up on any federal disclosure reports, and the timing of $118,667 sent by the RNC to a North Carolina party account controlled by the Republican House leadership raised the suspicion that the solicited corporate funds were being laundered for use in North Carolina elections. At the hearing, the chief executive of Klaussner Furniture confirmed that he had sent a large contribution to the RNC from his corporation's bank account at the request of Republican House Speaker Harold Brubaker (R-Randolph County).[71] The Federal Election Commission later fined two national Republican committees for using the Speaker's party account as a conduit to route money to unregistered local committees for electoral advocacy.[72]

At the end of the hearing, the State Board of Elections issued new regulations to ban the indirect flow of union and corporate funds into North Carolina elections through national political parties.[73] In 1999, the General Assembly bolstered this

---

OBSERVER (Raleigh, N.C.), May 31, 1998, at A24.

70. Testimony by Bob Hall at N.C. State Board of Elections hearing on May 31, 1998, based on a report by Hall entitled *Extortion, Bribery, or Business as Usual?* (filed as an attachment to the hearing record, and available at http://www.democracy-nc.org/moneyresearch/1998/extortionbribery.html) (on file with the First Amendment Law Review).

71. *See* Robert Lamme, *Elections Board Hears Testimony on GOP Money*, NEWS & RECORD (Greensboro, N.C.), May 30, 1998, at A1.

72. *Too-High Cost of Winning,* NEWS & OBSERVER (Raleigh, N.C.), July 13, 1999, at A8 ("[The FEC] levied $12,000 in penalties against two Republican finance committees that agreed to a spending subterfuge . . . [involving House Speaker Harold] Brubaker and the Randolph County GOP Executive Committee . . . In the FEC's analysis, the maneuver was deceitful on more than one count.").

73. N.C. BD. OF ELECTIONS, RULING AND PROCEDURES PURSUANT TO NCGS § 163-278.23 FOR NON-FEDERAL MONEY IN THE STATE OF NORTH CAROLINA (June 15, 1998).

regulation by outlawing contributions "made indirectly" by a corporation or union to a national party account "with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina."[74] The State Board of Elections used these provisions to prohibit the national parties from sending "soft money" (the super-sized donations that could not be used directly for federal candidates) into North Carolina elections, unless the party could document that the funds came from a bank account with no corporate or union funds.

In early 2000, the national parties spotted the silver-lining in the new regulations and began sending hundreds of thousands of dollars in super-sized donations, supposedly all from individuals, to the state parties and occasionally to a state candidate. Democracy North Carolina maintained that the Board should have stopped all soft money, because all the national party's bank accounts were closely coordinated and funds in the corporate accounts made it possible to send non-corporate money to states like North Carolina (the sort of "exchange" "made indirectly" that the new law barred). The Board did not agree, but in response to a complaint from Democracy South in May 2000, it did begin enforcing a requirement that the national money sent to North Carolina originate from a segregated account, fully disclosed, with details about the specific donations used.[75] By the end of 2000, North Carolina had joined many other states in receiving unprecedented amounts of soft money – more than seven million dollars, including $1.3 million sent directly to the Republican gubernatorial candidate, Richard Vinroot.[76]

---

74. N.C. GEN. STAT. § 163-278.19(a)(1) (2004).

75. Democracy South, *Complaint in the Matter of National 'Soft Money' and State Campaign Finance Issues*, *at* http://www.democracy-nc.org/moneyresearch/2000/Soft%20Money/softmoneycomplaint.html (Sept. 13, 2000).

76. Democracy South, *National Soft Money In N.C. Tops $7 Million, Gives Boost To Vinroot, Other Candidates*, *at* http://www.democracy-nc.org/moneyresearch/2000/Soft%20Money/softmoneytops$7M.html (Oct. 25, 2000). *See* Denise Barber, *Life Before BCRA: Soft Money at the State Level, 2000 and 2002,* INST. ON MONEY IN STATE POLITICS, *at* http://www.followthemoney.org/press/Reports/200312171.pdf (Dec. 17, 2003)

The passage of the Bipartisan Campaign Reform Act of 2002 (BCRA), better known as the McCain-Feingold law, ended the era of national parties collecting soft money.[77] But, as predicted, other conduits of money from corporations, unions, trade associations, and wealthy donors soon mushroomed; most commonly "527 committees," named for the section of the Internal Revenue Service code that grants them tax-exempt status.[78] North Carolina politicians quickly recognized the benefits and dangers of these new vehicles, which in turn led to another round of regulation aimed at keeping up with the changing world of campaign finance practices. House Speaker Jim Black became finance chair of a national 527 called the Democratic Legislative Campaign Committee, which received over $200,000 from tobacco and pharmaceutical companies within a few months of the businesses successfully lobbying the State House for multi-million-dollar tax breaks.[79] Art Pope, a former Republican legislator and patron of the conservative John Locke Foundation, poured over $200,000 of his company's money into a 527 committee that sponsored ads attacking moderate Republicans in the 2004 primary. The Republican Party committee that had sent more than one million dollars in soft money to help North Carolina's gubernatorial candidate in 2000 transformed itself into a 527 committee, independent of the Republican National Committee, and began sponsoring ads for favored state candidates around the nation.[80] As

---

(listing amounts state parties received in transfers of non-federal "soft money" from the national parties as well as substantial funds received from other sources).

77. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of 2 U.S.C., 18 U.S.C., 28 U.S.C., 36 U.S.C., and 47 U.S.C.).

78. 26 U.S.C. § 527 (2004).

79. *See* Dan Kane, *Firms Get Breaks, Dems Get Bucks,* NEWS & OBSERVER (Raleigh, N.C.), May 23, 2004, at A1; Dan Kane, *Tobacco Company Officials Aid Morgan, Black*, NEWS & OBSERVER (Raleigh, N.C.), July 30, 2004, at B5.

80. *See* Amy Gardner, *Debate Over 527 Ads Heats Up Governor's Race,* NEWS & OBSERVER (Raleigh, N.C.), Aug. 31, 2004, at B5; Eric Kelderman, *Govs' 527 Groups Gain Greenbacks, Influence*, STATELINE.ORG, *at* http://www.stateline.org/stateline/?pa=story&sa=showStoryInfo&id=404120 (Oct. 8, 2004).

the 2004 election intensified, a bipartisan alliance of moderate legislators in North Carolina rammed through a bill to block what they feared might be an avalanche of 527-committee activity financed with union or corporate money.[81] The new statute applies provisions of BCRA to state elections and severely limits when an "electioneering communication" can be made if it is paid by one of these sources, even if it does not contain the traditional language of express advocacy.[82] Once again, lawmakers properly focused regulations on the financing of communications, not the content, an approach that simultaneously protected the right to free speech and the right to an election free of corrupting, super-sized donations from the amassed wealth of businesses, unions and trade associations.

IV. PUBLIC FINANCING ALTERNATIVES

In the 2002 election, more than half the money raised by appellate judicial candidates in North Carolina came from attorneys, many of whom practiced law in the candidates' courtrooms, creating an awkward conflict of interest.[83] For example, of the $21,000 District Court Judge Fritz Mercer Jr. raised by mid-April 2002 for his appellate court race, seventy-nine percent came from forty three attorneys – forty two of whom practice in Mecklenburg County, where Judge Mercer presides. Supreme Court Justice Bob Orr raised $105,000 by the early spring and seventy four percent came from attorneys, including dozens of partners in the prestigious law firms that argue cases before the Supreme Court. "Our system of electing judges is like letting major league baseball players contribute money to influence the selection of umpires to call their games," observed Judge James A. Wynn Jr. at the time.[84] As a member of North Carolina's court of appeals and various national bar committees, Wynn became an early

81. Gardner, *supra* note 79; Kelderman, *supra* note 79.

82. N.C. GEN. STAT. §§163-278.80 – 278.84 (2003).

83. Democracy N.C., *Attorneys Supply 70% Of Campaign Money Raised By Candidates For State's Top Court*, *at* http://www.democracy-nc.org/moneyresearch/2002/attyssupplymoney061702.html (July 17, 2002).

84. *Id.*

advocate for providing a public financing option in judicial elections so candidates have an alternative way to finance their campaigns. "I believe that people who know our judges know their commitment to be fair and impartial outweighs any potential influence that a political contribution may have," Wynn said. "Unfortunately, the polls confirm that average citizens who do not personally know their judges have a very hard time believing that monetary contributions do not influence judicial decisions."[85]

Members of the bar and bench also find the flow of money from attorneys to judges troubling, yet efforts to move North Carolina to a merit selection system have repeatedly failed. Finally, in 2002, a broad coalition successfully promoted a four-part plan to change the method of electing candidates to the state court of appeals and supreme court. The plan would: (a) offer candidates a competitive amount of public funds for campaigning if they demonstrate a minimum level of public support and voluntarily accept strict spending and fund-raising limits, (b) lower the limits on private contribution, (c) make the elections nonpartisan, and (d) provide a Judicial Voter Guide with information about the courts, candidates, and voter registration. The public financing proposal gained the bipartisan support of dozens of current and former judges and hundreds of civic leaders and attorneys, including A.P. Carlton of Raleigh, then president of the American Bar Association. With crucial support from key legislators, a coalition of grassroots activists and civic organizations called N.C. Voters for Clean Elections coordinated the public education and lobbying effort that pushed the Judicial Campaign Reform Act through the State Senate in 2001 and then, by a narrow margin, through the State House in 2002.[86]

---

85. *Id.*

86. N.C. GEN. STAT. §163-278.61 (2003). Senator Wib Gulley (D-Durham County) introduced Senate Bill 1054, the Judicial Campaign Reform Act of 2001. On Nov. 20, 2001, the North Carolina Senate passed the bill by a vote of 27 to 16. On Sept. 26, 2001, the North Carolina House modified and passed the bill by a vote of 57 to 54. On Oct. 1, 2002, the Senate concurred with those modifications by a vote of 36 to 12. Governor Michael Easley signed the ratified bill into law in a ceremony in the old Capitol on Oct. 10, 2002. *See* Democracy N.C., *N.C. Judicial Campaign Reform Passes State*

As an approach to campaign reform, public financing has several important advantages. First, rather than mandate restrictions on potentially corrupting money from private donors, public financing adds a new stream of "clean" money; it offers "voter-owned" financing that replaces the need for hustling special interest money altogether. Second, rather than mandate restrictions on the candidates' fundraising, the program offers incentives to participate voluntarily; candidates get a reward if they abide by various requirements. Both of these non-restraining features undercut arguments that public financing stifles free speech. Rather than rely on "command and control" regulations of private money, the focus is on offering candidates a realistic alternative with public funds. Private donors can still give to candidates who choose to accept their funds; neither the donor nor the candidate is forced to abandon core freedoms. Some programs, including North Carolina's, provide additional matching or "rescue" money when opposition spending exceeds the spending limit a participating candidate has accepted, whether the excessive spending comes from a non-participating candidate or from an independent expenditure committee. As the First Circuit Court of Appeals has noted, even this feature adds both money and speech to the campaign, rather than mandating a cap on the private spending that harms free speech rights.[87]

Public financing is also a remedial policy that helps address the barrier referred to as "the wealth primary."[88] Research shows

---

Legislature, *at* http://www.democracy-nc.org/nc/judicialcampaignreform/govsigns.html (last visited Jan. 12, 2005) (on file with the First Amendment Law Review).

87. Daggett v. Webster, 74 F. Supp.2d 53 (D. Me. 1999), *aff'd sub nom.* Daggett v. Comm'n on Gov'tal Ethics & Election Practices, 205 F.3d 445 (1st Cir. 2000) (upholding the matching funds trigger in Maine's Clean Election Act and explicitly rejecting the reasoning in a Minnesota case, *Day v. Holahan*, 34 F.3d 1356, 1362 (8th Cir. 1994)). The First Circuit stated: "Appellants misconstrue the meaning of the First Amendment's protection of their speech. They have no right to speak free from response – the purpose of the First Amendment is to 'secure the widest possible dissemination of information from diverse and antagonistic sources.'" *Id.* at 464 (citing Buckley v. Valeo, 424 U.S. 1, 49 (1976)).

88. Jamie Raskin & John Bonifaz, *Equal Protection and the Wealth*

that money has become the single most important predictor of whether a candidate will win election to the North Carolina General Assembly.[89] Indeed, lack of wealth excludes many otherwise viable community leaders from competing for elected office, much as skin color once blocked people from meaningful political participation in the "white primary." Arguably, today's exclusionary "wealth primary" imposes an unconstitutional "property" requirement on potential officeholders; yet the government sanctions the practice as part of the privately financed campaign-financing system it administers. North Carolina's constitution contains especially strong language barring property ownership as a prerequisite for a person's ability to run for office or vote.[90] In 1999, a coalition composed of low-wealth candidates, voters, and groups representing low-income citizens filed a constitutional challenge to the "wealth primary."[91] Former North Carolina Supreme Court Chief Justice James G. Exum, Jr., and the

---

Primary, 11 YALE L. & POL'Y REV. 273 (1993) (coining the term "wealth primary"); Jamie Raskin & John Bonifaz *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160 (1994) (arguing for public financing as a remedy for the "wealth primary").

89. Dr. Theodore S. Arrington, chair of the UNC-Charlotte Department of Political Science, conducted an extensive analysis of General Assembly candidate finances over four election cycles and concluded:

> [I]n almost all situations, the amount of money that a candidate spends is critical in determining what proportion of the vote that candidate will receive and therefore whether he or she will win . . . Expenditures matter even when other factors such as incumbency are controlled or taken into account.

Declaration of Theodore S. Arrington, Royal v. North Carolina, 153 N.C. App. 495, 499, 570 S.E.2d 738, 741 (2002)) (No. 99 CV 13020) (unpublished expert testimony prepared for plaintiffs) (on file with the First Amendment Law Review).

90. "As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office." N.C. CONST. art. I, § 11.

91. *See "They Know That Their Father Is a Fighter": Challenging the Wealth Primary in North Carolina*, NVRI UPDATE (Nat'l Voting Rights Inst., Boston, Mass.), Spring 2000, at 3, *available at* http://www.nvri.org/updates/S2000.pdf.

Boston-based National Voting Rights Institute argued the case for the plaintiffs, but the North Carolina Court of Appeals refused to overturn a lower court's decision that the case lacked merit.[92] Nevertheless, many of the plaintiffs continue to believe the money chase has become an unconstitutional restraint on their voting rights. Importantly, like the "white primary," the wealth primary imposes a special hardship on racial minorities. For example, African-American candidates for the North Carolina General Assembly raise, on average, only about forty percent as much as their white counterparts; people of color make up only sixteen percent of the state legislature compared to thirty percent of the state's population. An exhaustive analysis of the two billion dollars given in federal elections during 2000 and 2002, entitled *The Color of Money*, concludes, "[I]n a political system in which you have to pay to play, people of color are largely excluded from the game."[93] The Fannie Lou Hamer Project, one of the authors of the *Color of Money* report, argues that winning public financing is the next phase of the voting rights struggle.[94] Whether as a means to correct an unconstitutional system or to ensure meaningful participation by a diversity of candidates, public financing offers a realistic chance

---

92. Royal v. North Carolina, 153 N.C. App. 495, 499, 570 S.E.2d 738, 741 (2002) (holding that the court could not order the state to provide public financing for political campaigns because the issue was for the legislature).

93. Fannie Lou Hamer Project, *The Color of Money: Campaign Contributions, Race, Ethnicity, and Neighborhood 2003 Major Findings*, *at* http://www.colorofmoney.org/majorfindings_2003.htm (Dec. 2003). The report quotes Hilary O. Shelton, Director of the Washington Bureau of the NAACP:

> As long as donors are more important than voters in determining who gets elected in this country, then African Americans are prevented from fully participating in benefits of our democracy. Welcome to the new poll tax: If you can't afford to contribute large sums to a politician, then you [sic] voice and your interests are muted.

Id.

94. The Fannie Lou Hamer Project (named for the legendary freedom fighter from Mississippi and co-founder of the Mississippi Freedom Democratic Party) also developed the "Fannie Lou Hamer Standard" for campaign finance reforms that help empower and protect the rights of low-income people of color. *See generally* The Fannie Lou Hamer Project (Kalamazoo, Mich.) *at* http:www.flhp.org (last visited Jan. 11, 2005).

for success to leaders with a base in their community who lack access to wealth. Without the public financing option, the right to political free speech for those leaders and their supporters is a hollow promise, effectively squelched.

Finally, public financing provides a way to change the dynamics in the relationship between private contributor and public servant. In a system wholly dependent on private money, the major suppliers enjoy a distinct advantage. Politicians need their cash and are placed in the unwholesome position of supplicants. The cash suppliers become the "piper who calls the tune," more important than the voters. Despite this distortion of democracy, major cash suppliers predictably resist efforts to add new sources of financial support that might weaken their advantage. In 2004, the North Carolina Home Builders Association vigorously fought a bill in the state legislature that authorized local governments to sponsor a public financing program in their local elections.[95] The builders' lobbyist told a legislative committee the bill would put his members at an "unfair" disadvantage.[96] Importantly, the "sprawl lobby" of

---

95. *See* Local Campaign Finance Reform, S.B. 760, 2004 Gen. Assem. (N.C. 2004) (proposed), *available at* http://www.democracy-nc.org/improving/S760page.pdf. Among the 2004 "legislative achievements" that are posted on its website, the N.C. Home Builders Association takes credit for "blocking several attempts to give local governments the authority to establish publicly funded local campaign finance programs." *See* N.C. Home Builders Ass'n, *Builderspage, at* http://www.nchba.com/ann/art.asp?type=legislative%20news&text=Legislative%20News&id=8933 (last visited Jan. 11, 2005) (on file with the First Amendment Law Review). *See also*, Fiona Morgan, *Home Builders Win the Prize for Lobbying*, INDEP. WKLY (Durham, N.C.), July 21, 2004 (reporting that residential development regulations promulgated by elected officials potentially affected by the Local Campaign Finance Reform bill, include "impact fees, environmental protections, smart growth ordinances and so on—[that] directly affect [members of the Home Builders Association's] profits").

96. Paul Wilms, Director of Government Affairs for the North Carolina Home Builders Association, forcefully spoke against the bill that would authorize local public financing at a July 2004 meeting of the House Committee on Election Law and Campaign Finance Reform. *See* N.C. Home Builders Ass'n, *NCHBA Scores Major Victories in 2004 Legislative Session, at* http://www.nchba.com/ann/art.asp?type=legislative%20news&text=Legislative%20News&id=8933 (last visited Jan. 11, 2005) [hereinafter *HBA Legislative Victories*] (on file with the First Amendment Law Review).

builders, realtors, developers and contractors is the single largest source of money in local elections, and it doesn't want competition.[97] Giving a candidate freedom from dependency on special-interest money is a terrifying thought to these interests. The builders' lobbyist even said the local public financing bill would impair his members' "First Amendment right to make contributions" because their check would not be as indispensable if the candidates had another source of money.[98] The Home Builders Association's website called the bill "unfair since it places local governments in direct competition with individual contributors who will continue to be subject to the $4,000 limit."[99] In other words, the group prefers candidates with limited choices, not with the freedom to choose how to finance *their* free speech.

The limited options a candidate has for financing a campaign are especially problematic in statewide contests for the agency heads in North Carolina's Council of State. Just as judicial candidates attract little interest from donors beyond the legal community, the would-be head of the insurance or agriculture department, treasurer and superintendent of public instruction, etc., gain little attention from contributors beyond the businesses to which the agency awards contracts or regulates.[100] The potential for

---

97. *See* Jay Price & David Raynor, *Developers Build Reputation As Big Campaign Donors,* NEWS & OBSERVER (Raleigh, N.C.), Oct. 28, 2000, at A1 ("Developers, builders and others whose paychecks depend on growth are by far the biggest contributors to candidates for local office in the Triangle, according to a News & Observer analysis of campaign-contribution records from the past two years."); *see also* Jen Pilla, *Many Donors Have Stake in Growth,* CHARLOTTE OBSERVER, Nov. 5, 2000, at B1 ("[I]t's clear that real estate and development is the single sector giving the largest amount to the candidates running for nine [Mecklenburg] county commissioner slots."). The "Sprawl Lobby" is also the sector giving the largest amount in state-level politics. *See* Democracy N.C., *The N.C. Home Builders Association and the Sprawl Lobby Donations, at* http://www.democracy-nc.org/moneyresearch/2003/SprawlCCNC03.pdf (Oct. 2003).

98. Paul Wilms, speaking at the N.C. House Committee on Election Law & Campaign Finance Reform Hearing, July 2004. *See supra* note 96.

99. This quote is excerpted from the North Carolina Home Builders Association's description of its opposition to Senate Bill 760 (Local Campaign Finance Options). *See HBA Legislative Victories, supra* note 96.

100. An analysis of contributors to several members of the Council of

corruption in that inherent conflict of interest played itself out in 2000 in the biggest political scandal in modern North Carolina history. In the 2000 primary election for State Commissioner of Agriculture, one of the candidates, Bobby McLamb, received an illegal $75,000 loan from a New Jersey carnival company, Amusements of America.[101] Amusements of America was interested in obtaining the contract to run the state fair, which the agriculture commissioner awards.[102] McLamb lost the primary to Meg Scott Phipps, but he and the carnival company's North Carolina agent, Norman Chambliss, immediately became active in Phipps's general election campaign and helped her raise tens of thousands of dollars in contributions from carnival-related business owners.[103] Phipps was finding it difficult to raise money for the obscure agriculture post, even though her father and grandfather served as North Carolina governors; her family eventually loaned the campaign more than $500,000.[104] After her narrow victory, Phipps placed McLamb and Chambliss in positions in her administration where they guided the process for choosing the state fair's chief operator; she ultimately awarded the contract to Amusements of America.[105] Newspaper coverage of Phipps's large loan repayments opened a can of worms that led to deeper investigations by the State Board of Elections in 2002 and then by the FBI and the U.S. Justice Department.[106] Phipps claimed

---

State reveals that they receive from 33 percent to 68 percent of their identified campaign funds (excluding family money) from donors tied to the sectors they award contracts to or regulate. *See* Democracy N.C., *Fundraising by Selected Council of State Members in 2000 Election*, *at* http://www.democracy-nc.org/moneyresearch/2004/COS2000.pdf (May 24, 2000).

101. *See* Anna Griffin, *Phipps Quits Post, Third Aide Indicted*, CHARLOTTE OBSERVER, June 7, 2003, at A1.

102. *Id.*

103. *See* Joseph Neff, *Phipps Aid Admits Guilt, Will Cooperate in Probe*, NEWS & OBSERVER (Raleigh, N.C.), May 13, 2003, at A1.

104. *Id.*

105. *Id.*

106. *See* Anna Griffin, *Trial Begins for Political Royalty*, CHARLOTTE OBSERVER, Oct. 20, 2003, at B1; Mark Johnson & Anna Griffin, *FBI Reportedly Investigating Ag Commissioner's Campaign*, CHARLOTTE OBSERVER, July 24, 2002, at A1; Bill Krueger & Joseph Neff, *Phipps Finances Probed*, NEWS & OBSERVER (Raleigh, N.C.), May 9, 2002, at A1.

ignorance of her campaign's finances and fundraising practices, but a string of plea-bargains by McLamb, Chambliss and a half dozen others revealed her involvement in receiving large, illegal cash contributions in 2000 and 2001.[107] Altogether, Democracy North Carolina identified over $300,000 from carnival interests that went to Phipps and her campaign.[108] Meg Scott Phipps was convicted on federal and state charges and began serving a four-year prison term in 2004.[109]

V. CONCLUSION

A robust public financing program would have given Phipps the freedom to reject special-interest contributions. Instead, she is the poster child for the corrupting power and bogus free speech "benefits" of a campaign finance system that protects private donors while limiting the choices of citizens and candidates. Once again, North Carolina's experience teaches us the importance of analyzing and addressing how rights in theory can become abuses in practice. The First Amendment is not a tool for turning elections into auctions, for maximizing the free flow of capital in politics while squeezing out candidates and voters, or for privatizing the process of choosing pubic officials. Rather it should enhance vibrant, honest debate among diverse, competitive candidates who engage citizens in the practice of self-government. Free and fair elections must be strengthened, not subverted, in the name of protecting free speech.

---

107. Anna Griffin, *Phipps Penalized $130,000*, CHARLOTTE OBSERVER, June 8, 2002, at A1. *See* Sharif Durhams, *Aide to Phipps Pleads Guilty in Finance Case*, CHARLOTTE OBSERVER, May 13, 2003, at B1.

108. *See* Democracy N.C., *Role of Norman Chambliss and Amusements of America in Meg Scott Phipps Campaign-Finance Scandal*, *at* http://www.democracync.org/moneyresearch/2004/COS2000.pdf (June 2004) (summarizing federal indictments and findings of State Board of Elections in the Phipps case).

109. Kristin Collins, *Phipps Admits Illegal Fund Raising*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 11, 2003, at A1; *see* Kristin Collins, *No New Jail Time for Phipps*, NEWS & OBSERVER (Raleigh, N.C.), May 8, 2004, at B1.